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February 6, 2001

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**VIA MESSENGER**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie Roman Salas

Secretary

Federal Communications Commission

445 12<sup>th</sup> Street, S.W., CY-B402

Washington, D.C. 20554

Re Verizon-New England, CC Docket No. 01-9

Dear Ms. Salas:

Enclosed please find an original and one copy of RCN BecoCom's Comments in connection with the application of Verizon-New England *et al* for authority under section 271 of the Communications Act to offer interLATA service in the commonwealth of Massachusetts. An additional 12 copies are being filed simultaneously with Susan Pié and one is being sent to International Transcription Service. A copy of this letter and RCN's Comments have also been sent by first class and electronic mail to all parties of record.

Please address any questions to undersigned

Very truly yours,



William L. Fishman

Enclosure

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Verizon, Massachusetts  
271 Application  
Comments of RCN  
February 6, 2001

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

In the Matter of

Application by Verizon New England Inc., )  
Bell Atlantic Communications, Inc. (d/b/a )  
Verizon Long Distance), NYNEX Long )  
Distance Company (d/b/a Verizon Enterprise )  
Solutions), and Verizon Global Networks, Inc., )  
for Authorization To Provide In-Region, )  
InterLATA Services in Massachusetts )

CC Docket No. 01-9

**COMMENTS  
OF  
RCN-BECOCOM, L.L.C.**

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February 6, 2001.

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A B C D E

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Application by Verizon New England Inc.,	)	
Bell Atlantic Communications, Inc. (d/b/a	)	
Verizon Long Distance), NYNEX Long	)	
Distance Company (d/b/a Verizon Enterprise	)	CC Docket No. 01-9
Solutions), and Verizon Global Networks, Inc.,	)	
for Authorization To Provide In-Region,	)	
InterLATA Services in Massachusetts	)	

**COMMENTS  
OF  
RCN-BECOCOM, L.L.C.**

RCN-BecoCom, L.L.C. ("RCN"), a Massachusetts-certified CLEC and franchised cable overbuilder in the Boston, MA metropolitan area, pursuant to the Public Notice of January 16, 2001, DA 01-106, and by the undersigned counsel, herewith submits its Initial Comments in the above-captioned proceeding. Because Verizon-New England, et al. ("Verizon") has failed to fulfill its market-opening obligations under sections 271(c)(2)(B)(iii), 251(b)(4) and 224 of the Communications Act of 1934, as amended,<sup>1</sup> RCN opposes grant of Verizon's section 271 application.

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<sup>1</sup> 47 U.S.C. § § 271(c)(2)(B)(iii), 251(b)(4) and 224.

Verizon initially filed its § 271 application with the FCC on September 22, 2000.

Following the submission of numerous responsive filings from a variety of parties, on December 18, 2000, Verizon withdrew its application to alter the showing it had initially filed with respect to loop pricing.<sup>2</sup> On January 16, Verizon filed a "Supplemental Filing," indicating that the "re-filed application adopts *in toto* Verizon's original application."<sup>3</sup> The Supplement does not address in any way checklist item # 3 (access to poles, conduits, and rights of way) which was the only element of Verizon's initial application to which RCN objected. Accordingly, relying on the assurance that RCN's prior submissions in response to Verizon's initial application are entitled to the same revived status as Verizon's initial application itself,<sup>4</sup> RCN rests on the objections already submitted to the Commission and has no further substantive comments to file at this time.<sup>5</sup>

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<sup>2</sup> DA 00-2851, CC Docket No. 00-176 (CCB *rel.* Dec. 18, 2000).

<sup>3</sup> Supplemental Filing at 1. While Verizon has thus muddied the nature of its January 16<sup>th</sup> filing, *i.e.*, is it a supplement to the prior filing or a wholly new filing, albeit one which incorporates by reference the prior submission, it is important to note that the previously filed application was formally withdrawn and thus is properly before the Commission now only if incorporated by reference in the new filing. Were it otherwise, the 90 day clock in section 271(d) (3) would bar consideration of the previously filed material.

<sup>4</sup> See Public Notice, DA 01-106, *rel.* Jan. 16, 2001.

<sup>5</sup> For the convenience of the Common Carrier Bureau's staff, RCN lists in Appendix A hereto each of its prior filings in Docket No. 00-176.

There are, however, a few procedural matters which warrant brief attention. In its Supplemental Filing Verizon states that "the extensive record amassed on Verizon's original application demonstrates [that] the only issues that remain in genuine dispute relate to Verizon's performance on the subset of loops used by other carriers to provide DSL Service."<sup>6</sup> This observation is false today, just as it was false when made earlier.<sup>7</sup> RCN's Ex Parte letter of December 11, 2000 noted that RCN does indeed "seriously dispute that Verizon is in compliance with checklist item number 3, that is, the provision of nondiscriminatory pole access on terms and conditions that are just and reasonable."<sup>8</sup> The materials listed in Appendix A hereto, as well as the Justice Department's written observation that "RCN's allegation that Verizon is not providing nondiscriminatory access to its poles... deserves careful attention. . . ."<sup>9</sup> should suggest that Verizon's compliance with section 271(c)(2)(B)(iii), 251 (b)(4) and 224 is indeed seriously disputed. The repeated incantation of assertions which are manifestly false is no substitute for substantive analysis and should not be allowed to pass unchallenged.

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<sup>6</sup> Supplemental Filing at 1.

<sup>7</sup> See Verizon's Ex Parte letter of December 1, 2000 saying that "there is no serious dispute that Verizon satisfied at least 13 and one-half points of the 14 point checklist."

<sup>8</sup> Ex Parte Letter of RCN dated December 11, 2000, at 1.

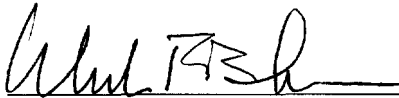
<sup>9</sup> Department of Justice Evaluation of October 27, 2000, p. 7 n. 24.

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RCN is of course prepared to reargue its views in detail if Verizon wishes to reassert that its checklist item # 3 performance is satisfactory, but repeating conflicting contentions already fully set forth would appear to unnecessarily burden the record.

Respectfully submitted,

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Counsel to RCN BecoCom, LLC

February 6, 2001

**ATTACHMENT A**

- |    |                                   |                   |
|----|-----------------------------------|-------------------|
| 1. | Ex Parte Letter                   | October 13, 2000  |
| 2. | Opposition of RCN-BecoCom, L.L.C. | October 16, 2000  |
| 3. | Ex Parte Letter                   | October 25, 2000  |
| 4. | Reply Comments                    | November 3, 2000  |
| 5. | Supplementary Ex Parte Comments   | November 14, 2000 |
| 6. | Ex Parte Letter                   | December 11, 2000 |

RCN also lodged with the Commission a videotape presentation on pole boxing issues.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of February, 2001, a copy of the foregoing Comments of RCN-BecoCom, L.L.C. was served on the following parties via messenger or, if marked with an asterisk, by first class postage-paid U.S. mail and electronic mail:

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Verizon, Massachusetts  
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Verizon, Massachusetts  
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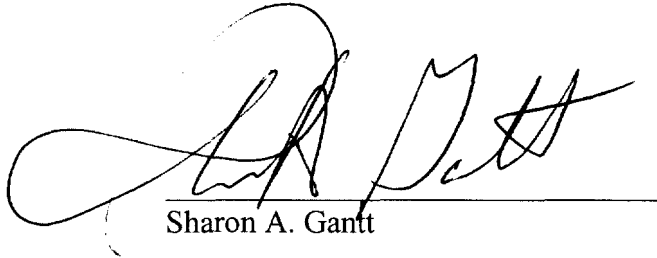
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